

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LIZZIE PUGH, an individual,

Plaintiff,

v.

Case No: 22-cv-12028
Hon. Robert H. Cleland
Mag. Anthony P. Patti

FIFTH THIRD BANCORP, a foreign corporation, FIFTH THIRD FINANCIAL CORPORATION, a foreign corporation, OLD KENT MORTGAGE SERVICES, INC., a domestic corporation,

Defendants.

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**PLAINTIFF'S RESPONSE TO DEFENDANTS' "CORRECTED MOTION
TO DISMISS OLD KENT MORTGAGE SERVICES AS A
FRAUDULENTLY JOINED PARTY"**

Defendants' Motion to Dismiss Old Kent Mortgage Services ("OKMS") is moot. On September 22, 2022, Plaintiff filed her First Amended Complaint, voluntarily dismissing OKMS. ECF No. 7. The relief Defendants' Motion seeks has been achieved and no live controversy remains with regard to OKMS. *See Thomas Sysco Food Servs. v. Martin*, 983 F.2d 60, 62 (6th Cir. 1993). In violation of L.R. 7.1, Defendants filed the instant motion without seeking concurrence in the relief sought. Had Defendants sought concurrence and informed Plaintiff of their change in position as to the correctly named Defendants (set forth below), the parties could have avoided unnecessary motion practice.

Defendants' contention that OKMS was "fraudulently joined" is unfounded. Plaintiff named OKMS after defense counsel took the untenable and incorrect position that the only proper defendant was Fifth Third Bank, National Association. Defendants' position has now changed.

On June 27, 2022, Plaintiff filed a Complaint against Fifth Third Bancorp, Fifth Third Financial Corporation and Old Kent Mortgage Services, Inc. in federal court. *Pugh v. Fifth Third Bancorp et al.*, Case No. 22-cv-11433. On July 8, 2022, Plaintiff voluntarily dismissed the case, pursuant to Fed. R. Civ. P. 41(A)(1)(a)(i) before serving any of the defendants. *Id.* at ECF No. 3.

On or around July 11, 2022, defense counsel contacted Plaintiff's counsel, in part to discuss "cleaning up the caption." Defense counsel stated that he would need to get back to Plaintiff's counsel on the issue of the correct Defendants.

Counsel for both parties spoke via phone again on July 29, 2022. Defense counsel took the position that the only proper defendant in this dispute was Fifth Third Bank, National Association and that the named defendants (Fifth Third Bancorp, Fifth Third Financial Services, and OKMS) no longer existed.

Plaintiff's counsel explained that defense counsel's position could not be correct. First, Fifth Third Bank, National Association is not registered to do business in the State of Michigan through LARA and therefore could not be the entity which controls the Michigan branches. Second, both Fifth Third Financial Corporation and Old Kent Mortgage Services, Inc. have active registrations with LARA and filed annual reports for 2022 (i.e. the entities were still in existence). **Ex. A**, LARA results. Defense counsel was unable to explain his position and maintained that Fifth Third Bank, National Association was the only correct entity. The parties agreed that they would have to work out the correct corporate entities in discovery and defense counsel only agreed to accept service on behalf of Fifth Third Bank, National Association. **Ex. B**, Email dated Aug. 8, 2022.

On August 5, 2022, Plaintiff filed a complaint in Wayne County Circuit Court. Defense counsel accepted service of the complaint on behalf of Fifth Third Bank, National Association only. Plaintiff served the registered agents listed on LARA for Fifth Third Financial Corporation and Old Kent Mortgage Services, Inc. Defendants filed their notice of removal to this Court on August 29, 2022.

As set forth in their Motion to Dismiss, Defendants have abandoned their prior position and now take the position that Fifth Third Financial Corporation—an entity registered to do business in Michigan—was correctly named. Based on Defendants' new position and acknowledgement that an entity registered through LARA must be named, Plaintiff filed her First Amended Complaint on September 22, 2022. Defendants' assertion that OKMS was "fraudulently joined" is baseless and ignores defense counsel's changing position as to the proper Defendants.

For the reasons set forth herein, Plaintiff requests that this Court deny Defendants' "Corrected Motion to Dismiss Old Kent Mortgage Services as a Fraudulently Joined Party" as moot.

Dated: September 22, 2022

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2022, I electronically filed the foregoing Response and exhibits with the Clerk of the Court using the ECF system, which will

send notification of such filing and service of said documents to all parties through their counsel of record.

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